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January 5, 2024

VIA ECF

Hon. James M. Wicks, U.S.M.J.
United States District Court for the Eastern District of New York
100 Federal Plaza, Courtroom 1020
Central Islip, NY 11722

**Re: *Superb Motors Inc. v. JPMorgan Chase Bank, N.A., et al.*
Civil Action No. 2:23-cv-6188**

Dear Judge Wicks:

We represent defendant JPMorgan Chase Bank, N.A. ("Chase") in the above-referenced matter. Pursuant to Your Honor's Individual Rules and Practices, we respectfully request a pre-motion conference regarding a proposed motion to dismiss the First, Second, Forty-Seventh and Forty-Eighth Causes of Action contained in the Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6).

The Amended Complaint details a scheme of racketeering by which defendants purportedly engaged in conduct to extract money from Plaintiffs and leave them with liabilities resulting from defendants' conduct. Plaintiffs allege, without any detail, that Chase participated in the scheme described in the Complaint and violated the RICO statute, 18 U.S.C. § 1962, by allowing defendant Anthony Deo ("Deo") to process checks from Superb Motors Inc.'s bank account even though Chase knew Deo was not a signatory on the account. See Complaint at ¶ 316. Plaintiffs further allege that Chase was part of a conspiracy in violation of 18 U.S.C. § 1962(d). See Complaint at ¶¶ 332-341. The remaining allegations against Chase are violations of state law over which, Plaintiffs claim, the Court may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367. See Complaint at ¶¶ 608-630 and ¶¶ 636-641.

A. Plaintiffs Fail to Allege Facts Sufficient to Establish a RICO Claim and Conspiracy in Violation of 18 U.S.C. § 1962 (First and Second Causes of Action).

To establish a claim for civil violation of the RICO statute at 18 U.S.C. § 1962, "a plaintiff must show that he was injured by defendants' (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." See *Cofacredit, S.A. v. Windsor Plumbing Supply Co., Inc.*, 187 F.3d 229, 242 (2d Cir. 1999) (quoting *Azirelli v. Cohen Law Offices*, 21 F.3d 512, 520 (2d Cir. 1994)). A RICO claim is subject to the heightened pleading standard of Federal Rule of Civil Procedure 9(b). See *Plount v. American Home Assurance Co.*, 668 F. Supp. 204, 206-7 (S.D.N.Y. 1987).

Plaintiffs have failed to allege an enterprise required under the RICO statute. An enterprise includes “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C. § 1961(4). To establish an association-in-fact enterprise, plaintiffs must demonstrate “three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.” *See Boyle v. United States*, 556 U.S. 938 (2009). Here, the Amended Complaint is devoid of any facts that would show the existence of an enterprise to which Chase was a participant. There are no facts alleging a relationship between Chase and any member of the alleged scheme and there are no allegations regarding the time in which Chase allegedly participated. General blunderbuss allegations claiming violation of the RICO statute do not suffice. *See In re Agape Litig.*, 681 F. Supp. 2d 352 (E.D.N.Y. 2010).

Plaintiffs’ RICO conspiracy claim should also be dismissed on the ground that Plaintiffs fail to identify any predicate acts Chase and the co-defendants agreed to commit. *See Elsevier Inc. v. W.H.P.R., Inc.*, 692 F. Supp. 2d 297, 313 (S.D.N.Y. 2010). Further, a claim for RICO conspiracy cannot survive without an underlying properly pled RICO claim. *See Gross v. Waywell*, 628 F. Supp. 2d 475, 500 (S.D.N.Y. 2009).

B. Plaintiff’s Common Law Claims of Negligence and Conversion (Forty-Seventh and Forty-Eighth Causes of Action) Are Displaced by the UCC and Should be Dismissed

Plaintiff’s common law claims of negligence and conversion are barred by the UCC, which preempts certain common law causes of action in New York. *See U.S. Small Business Admin. v. Citibank, N.A.*, 1997 WL 45514, at *4 (S.D.N.Y. Feb. 4, 1997) (“The NYUCC displaces certain common law causes of action.”). In those instances where “particular provisions” of the UCC govern the conduct at issue, a plaintiff will generally be precluded from asserting claims under common law which would “impose liability inconsistent with the rights and liabilities” created by the UCC. *See Grain Traders, Inc. v. Citibank, N.A.*, 160 F.3d 97, 103 (2d Cir. 1998) (dismissing common law claims asserted alongside UCC claims brought under Article 4-A); *Fischer & Mandel, LLP v. Citibank, N.A.*, 632 F.3d 793, 801 (2d Cir. 2011) (affirming finding that negligence claim was preempted by UCC); *2006 Frank Calandra, Jr. Irrevocable Trust v. Signature Bank Corp.*, 816 F. Supp. 2d 222, 234-35 (S.D.N.Y. 2011) (same).

Here, the allegations all concern the negotiation of certain checks drawn on accounts maintained at Chase; as such, any claims concerning those checks must be litigated under the provisions of the UCC, and not according to common law principles.

Enclosed please find a proposed briefing scheduling order, which was twice circulated to counsel. We have received no objections. Please note that in view of Mr. Thomasson’s disqualification as counsel for the Deo Defendants, we have not been able to secure the consent of the Deo Defendants as to the scheduling order. Thank you.

Respectfully Submitted,

/s/ Anthony C. Valenziano
Anthony C. Valenziano
Encl.

cc: All Counsel of Record (via ECF with encl.)

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SUPERB MOTORS INC., TEAM AUTO SALES LLC, ROBERT ANTHONY URRUTIA, 189 SUNRISE HWY AUTO LLC, NORTHSHORE MOTOR LEASING, LLC, BRIAN CHABRIER, *individually and derivatively as a member of* NORTHSHORE MOTOR LEASING, LLC, JOSHUA AARONSON, *individually and derivatively as a member of* 189 SUNRISE HWY AUTO, LLC, JORY BARON, 1581 HYLAN BLVD AUTO LLC, 1580 HYLAN BLVD AUTO LLC, 1591 HYLAN BLVD AUTO LLC, 1632 HYLAN BLVD AUTO LLC, 1239 HYLAN BLVD AUTO LLC, 2519 HYLAN BLVD AUTO LLC, 76 FISK STREET REALTY LLC, 446 ROUTE 23 AUTO LLC and ISLAND AUTO MANAGEMENT, LLC,

Plaintiffs,

v.

ANTHONY DEO, SARAH DEO, HARRY THOMASSON, DWIGHT BLANKENSHIP, MARC MERCKLING, MICHAEL LAURIE, THOMAS JONES, CPA, CAR BUYERS NYC INC., GOLD COAST CARS OF SYOSSET LLC, GOLD COAST CARS OF SUNRISE LLC, GOLD COAST MOTORS AUTOMOTIVE GROUP LLC, GOLD COAST MOTORS OF LIC LLC, GOLD COAST MOTORS OF ROSLYN LLC, GOLD COAST MOTORS OF SMITHTOWN LLC, UEA PREMIER MOTORS CORP., DLA CAPITAL PARTNERS INC., JONES, LITTLE & CO., CPA'S LLP, FLUSHING BANK, LIBERTAS FUNDING LLC, and J.P. MORGAN CHASE BANK, N.A.,

Defendants.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Case No.: 2:23-cv-6188 (OEM)(JMW)

PROPOSED SCHEDULING ORDER

Upon consent of the parties, it is hereby ORDERED as follows:

1. JPMorgan Chase Bank, N.A. (hereinafter, "Chase") shall serve its papers in support of its motion to dismiss the Amended Complaint as against Chase on or before February 5, 2024.
2. Opposition to Chase's motion to dismiss the Amended Complaint shall be served on or before March 11, 2024.
3. Chase's reply papers, if any, in further support of its motion to dismiss the Amended Complaint shall be served on or before April 1, 2024.

This Scheduling Order may be altered or amended upon a showing of good cause not foreseeable at the date hereof.

CONSENTED TO BY:

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SO ORDERED:

Hon. James M. Wicks, U.S.M.J.

Date

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